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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2010-435**

12 **JOSE GERARDO MARTINEZ**
720 Nispola Drive
13 Laredo, Texas 78046
14 **Registered Nurse License No. 657189**

ACCUSATION

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
21 Department of Consumer Affairs.

22 **Registered Nurse License**

23 2. On or about May 4, 2005, the Board issued Registered Nurse License Number
24 657189 to Jose Gerardo Martinez ("Respondent"). The registered nurse license was in full force
25 and effect at all times relevant to the charges brought herein and will expire on July 31, 2010,
26 unless renewed.

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STATUTORY PROVISIONS

3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

6. Code section 726, states, in pertinent part:

The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division....

COST RECOVERY

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Out-of-State Discipline)

8. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a)(4) on the grounds of unprofessional conduct, in that Respondent has been disciplined by the Texas

1 Board of Nursing. On or about May 17, 2008, while on duty as a registered nurse at Doctor's
2 Hospital, Laredo, Texas, Respondent, by his own admission, performed a digital rectal
3 examination on Patient Medical Record #265933, an eleven year-old female, without a doctor's
4 order and without a witness present. In response to Findings of Fact Number 7, Respondent
5 admitted he made a mistake, was guilty and accountable for his actions, and did not want to
6 further embarrass himself or the facility. The Texas Board of Nursing accepted Respondent's
7 voluntary surrender of his Texas Registered Nurse License Number 632560, as more particularly
8 set forth in the Texas Board of Nursing's Agreed Order, attached hereto as Exhibit A.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Sexual Abuse or Misconduct with a Patient)**

11 9. Respondent is subject to discipline pursuant to Code section 726, on the grounds of
12 unprofessional conduct, in that on or about May 17, 2008, while on duty as a registered nurse at
13 Doctor's Hospital, Laredo, Texas, Respondent committed acts constituting sexual abuse or
14 misconduct with a patient, as more particularly set forth in paragraph 8, above.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Registered Nursing issue a decision:

18 1. Revoking or suspending Registered Nurse License Number 657189, issued to
19 Jose Gerardo Martinez;

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2. Ordering Jose Gerardo Martinez to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: _____

3/16/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN

Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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